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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN ROBERT SUDER,

Defendant and Appellant.

G043409

(Super. Ct. No. 07HF1826)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Sanford, Jr., Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted defendant Brian Robert Suder of stalking (Pen. Code, § 646.9, subd. (a)), making a criminal threat (Pen. Code, § 422), and simple assault (Pen. Code, § 240). The court suspended imposition of a sentence and placed defendant on five years' probation with the condition he serve 365 days in jail. Various fees and fines were also assessed. A 10-year no contact order was issued and defendant was also required to attend a batterers and other programs.

Defendant and F.V. dated for not quite two years, living together for part of that time, before she began dating Joe Wooten. Thereafter defendant tried to convince F.V. to get back together with him. One night, when F.V. was sleeping, defendant entered the bedroom of her residence without her permission. She awoke to find him lying on top of her, holding her arms above her head. He proceeded to take off his shirt and scream at her about dating someone else; F.V. was afraid. After she was able to convince him to go to the living room, they argued and he pushed her to the couch. Police ultimately took defendant from the house.

The next day defendant sent text messages to F.V. that he was going to her workplace and that he was in her bedroom; he stated he would "take care of" her roommate if the latter did anything. Defendant sent hundreds of text messages to F.V. alternately professing his love and hate, stating he wanted to kill her. He also called F.V. at work 20 to 30 times a day. As a result she did not perform well at work and was terminated. Although F.V. told defendant to stop he refused. After a short respite, defendant resumed his calls and texts to F.V., which sometimes reached 200 per day. His threats became more violent, including stabbing and killing her, and telling her of connections with the mob, who could make her disappear. Defendant's conduct scared F.V.

For a period of months defendant also called and sent texts to Wooten hundreds of times in a day. In them he made derogatory comments about F.V. and Wooten, including "she belongs to me, she'll always belong to me," and "I own her."

After defendant appealed we appointed counsel to represent him. Counsel filed a brief which set forth the facts of the case and the disposition. He did not argue against defendant, but advised the court he had not found any issues to argue on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) He suggested two issues to assist us in our independent review of the record, as set out below. Defendant was given 30 days to file written argument in his own behalf. That period has passed and we have received no communication from him. We examined the entire record to determine if any arguable issues were present, including those suggested by counsel and found none. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111-112.)

DISCUSSION

1. Admission of Text Message Sent to Wooten

The court did not err in admitting text messages and e-mails defendant sent to Wooten. To constitute a criminal threat a statement need not be made directly to the victim; it can be made to a third party if it is shown the defendant intended that the threat be relayed to the intended victim. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) It is reasonable to infer defendant intended Wooten would show the messages to F.V. and the evidence shows he did.

2. Unanimity Instruction

On the stalking count, the jury was instructed with CALCRIM No. 1301, which provides that the prosecution must prove "defendant willfully and maliciously harassed or willfully, maliciously, and repeated followed another person" and "made a credible threat with the intent to place the other person in reasonable fear for her safety." The instruction did not mention that the jury had to unanimously agree on the act

defendant committed, which generally is required unless the prosecution specifies a particular crime (*People v. Russo* (2001) 25 Cal.4th 1124, 1132) or defendant committed a continuous course of conduct (*People v. Stankewitz* (1990) 51 Cal.3d 72, 100). “Since the Legislature defines stalking as a crime requiring a continuous course of conduct over a period of time, no unanimity instruction was required here. [Citations.]” (*People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1198.)

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.